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HAND DELIVERY & ELECTRONIC MAIL

The Honorable Charles Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Proposed revisions to Articles 5 and 7 of the Public Service Commission regulations; Docket No. 2006-9-WS

Dear Mr. Terreni:

On behalf of this firm's water and wastewater utility clients, let me express appreciation for the opportunity to offer comments on the proposed revisions to the Sewerage and Water Utilities articles of the Commission's regulations ("Proposed Revisions"). We applaud the Commission's proactive approach to addressing issues and concerns of the regulated entities through revisions and updates to the regulations. There are two specific issues that deserve attention – (1) the proposed revisions to Regulation 103-535.O relating to agreements between a utility and a landlord and (2) the proposed revision by the Office of Regulatory Staff ("ORS") relating to loan agreements.

(1) Regulation 103-535.O.

As to the first issue, several utilities have commented on the proposed deletion of Regulation 103-535.O already, and those comments are reiterated and incorporated herein. See Comments filed by Carolina Water Service et al. on January 9, 2006. In short, the deletion of the regulation could adversely impact regulated utilities, while a minor amendment to the language would comply with the statutory language found in S.C. Code Ann. § 27-33-50. The regulation allows a utility to recover a reconnection charge and ensure payment of charges legally owed from the landlord. The statutory provision that prohibits a landlord from being liable for a tenant's nonpayment only applies to buildings with ***three or less tenants***. It does not affect

apartment complexes or buildings. Applying the principle of expressio unius est exclusio alterius, the General Assembly implicitly recognized that a utility could recover such fees and charges from the landlord pursuant to the regulatory provision. See German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 576 S.E.2d 150, 607 (2003). Thus, repealing the regulation is arguably contrary to the statutory scheme set forth by the General Assembly.

Further, it should be noted that numerous tariffs incorporate that provision by reference. Would those tariffs remain valid, or would the repeal of the regulation invalidate the recovery provisions found in various tariffs?

Moreover, from a policy standpoint, retention of subsection O of the regulation assists utilities in fully recovering costs. Should a tenant skip out on paying successive bills and the utility seek to terminate service, it could do so, but under the proposed scheme it may never recover the lawfully owed charges from the tenant. Renters are transient by nature, and that cost incurred by the utility would be borne by the ratepayers. In other words, without a mechanism to recover the reconnection fee and ensure payment of lawfully owed charges from a landlord, a utility's customers may be subsidizing those customers who refuse to pay and in fact encourage renters who are moving to not utility bills prior to a move. The repeal of that subsection O may prompt some utilities to install new taps at ***each*** premise, resulting in increased expense for the utility and the imposition of a tap fee on new customers (or renters).

The statutory language does not warrant a wholesale deletion of regulation subsection 103-535.O, which is essential to a utility because it allows a utility to recover its costs and to ensure that some customers who pay their bills are not subsidizing those customers that do not. Therefore, the regulatory language need only be amended as suggested in the January 9 comments to comply with the statutory language and provide utilities with a mechanism to recover costs.

(2) Regulations 103-541 and 103-743.

Regarding the proposal from ORS to amend the language in Regulations 103-541 and 103-743 to provide that water and wastewater utilities must provide notice to the Commission of loan agreements, the proposed language is unnecessary and unwarranted. A filing of the proposed information serves no useful purpose. Such information is generally provided in the scope of a rate proceeding, when the information is timely and holds some relevance and value. Further, the Commission does not require "notice" of other agreements or approvals, such as environmental permits or business licenses or equipment purchases.

Additionally, the proposed language is dangerously vague. Terms such as "any loan agreement" and "assets of the utility" encompass a whole host of items. Just about anything could be construed as a loan, from credit card accounts to lines of credit to promissory notes to traditional loans from lending institutions. And "assets" could likewise include any item that is carried on the books of a company, from a copying machine to the actual plant itself. The one-year limit also poses problems. As a practical matter, just about any real "loan," such as a

traditional loan from a lending institution, would be longer than one year. As written, the requirement is overly burdensome and vague. And again, what purpose would notification serve in these circumstances?

In other words, such a "notification" requirement imposes an additional and unnecessary burden on the regulated utility when the information is unhelpful and serves no useful purpose.

Again, the regulated water and wastewater utilities sincerely appreciate the Commission's time and consideration in reviewing the regulations and actively seeking the input of the regulated community. If you have any questions or would like to discuss any of these issues further, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

RRL/msp

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